



City of Rockville

M E M O R A N D U M

July 7, 2004

TO: City of Rockville Planning Commission

FROM: Deane Mellander, Planner III

VIA: Bob Spalding, AICP, Chief of Planning

SUBJECT: Proposed Zoning Text Amendment TXT2003-00208; To allow "Cosmetologist" as a special exception use in the one-family residential zones.

BACKGROUND

The applicant initially submitted a request to the Mayor and Council for zoning text amendment to allow cosmetology as a permitted home occupation use in the residential zones. The Mayor and Council held a preliminary review of the request at the meeting on May 10, 2004. The Mayor and Council directed the staff to draft a text amendment designating the use as a special exception within the home occupation regulations and limiting the use to one service chair.

ANALYSIS

The statement of the applicant, Attachment 3, was presented to the Mayor and Council in support of adding cosmetology as a permitted home occupation. At the time of preliminary review by the Mayor and Council the staff expressed concern to that allowing the use without restriction might result in a substantial commercial operation in the one-family neighborhoods. In addition, under State regulations a cosmetologist operating in a one-family residence must have a direct entrance from the outside into the service area, which is at odds with the strict reading of the City's home occupation regulations.

Between 1961 and 1981 the zoning ordinance allowed "beauty culture" as a special exception in the one-family zones, under the home occupation regulations. Several special exceptions for the use were granted during this time period. The use was deleted from the code by text amendment T-40-80 following a public hearing in which some citizens testified that the use could have an adverse impact on the one-family neighborhoods.

As indicated above, the applicant has requested that the use, now termed cosmetology, be reinstated in the code as a permitted home occupation. The applicant raises a number of factual and legal issues in support of her application. Although these issues may be considered by the Mayor and Council, none of them compel the Mayor and Council to allow cosmetology in a residential zone, either as a permitted “as of right” use or as a special exception use. Regardless of any alleged “errors” that may or may not have been made in the past, the issue of which uses are allowed in which zones in the City is wholly within the legislative discretion of the Mayor and Council.

The proposed text amendment would amend the language of Section 25-1, “Definitions”, as well as add a new section to Article VIII, regulating special exceptions. The change in the definition of Home Occupations is needed because of an apparent conflict between the restrictions on separate outside entrances, and the requirements of the State that such a cosmetology use have a direct entrance from the outside. Currently, only health professionals may have a separate entrance. This provision apparently has been interpreted in different ways over the years. In order to avoid any ambiguity, staff felt it useful to specifically designate a cosmetologist as a use that may have a separate entry.

The text amendment will amend the Use Tables to add a new item number 7 under the Home Occupations provision entitled Cosmetologist. An “S”, indicating a special exception, is to be added in all of the one-family residential zones, R-60 thru R-E.

The proposed text amendment would add a new Section 25-375 to Article VIII, Division 2, that provides specific standards and requirements for a cosmetologist as a special exception use. The provision is limited only to the use as a home occupation in the one-family zones. The staff-recommended changes parallel the findings and conditions of accessory apartments. It does not apply in the nonresidential zones. Where the use is otherwise permitted, it is not subject to these provisions.

Consistent with the way this use was administered between 1961 and 1981, the use must comply with the provisions regulating home occupations in Sec. 25-1. This means that the service may be performed only by members of the immediate family residing in the home, cannot use more than 20% or 300 square feet (whichever is lower) of the gross floor area, and cannot have any assistants not residing in the home. In addition, only one customer service chair per residence is allowed.

The provision also allows the Board of Appeals to approve a separate entrance to the use from the outside, as required by the State Department of Labor, Licensing and Regulation. Such entrance must retain the single-family appearance of the house, as must any related modifications to the house. No variance may be granted to accommodate the use. The Board may impose additional conditions, such as regulating the hours of operation or the number of customers on-site at one time, so as to limit any adverse impact on the surrounding neighborhood.

The staff is proposing that at least one off-street parking space be required in connection with the use, beyond the two spaces normally required for the house. If the Board determines that there is sufficient on-street parking to accommodate the use without adverse impact, the off-street parking may be waived. In addition, the applicant must possess a valid cosmetology license from the State before the special exception use can be undertaken.

Finally, the proposed language requires that the use be limited to the applicant and not “run” with the land. The use will automatically expire under the following conditions:

- ## The owner/applicant sells the property;
- ## The use is abandoned for a period of 6 months;
- ## The owner/applicant’s license is suspended, revoked by the State or expires.

The applicant maintains that cosmetology should be treated no differently than other home occupations that are permitted by right, such as health professionals, lawyers, CPA’s and the like. There are permitted by right, with no additional regulations beyond those contained in the Home Occupation definition. While there may be some merit to this argument, the larger issue is the need for a broader review of the home occupation provisions. The County and the City of Gaithersburg have substantially amended their provisions in the past 15 years, whereas the City’s regulation has not substantially changed since the 1950’s. However, the review process would entail a substantial amount of work program effort. Such work should more properly be folded into a comprehensive review of the entire zoning ordinance. The Mayor and Council have a three-year program, beginning in this fiscal year, to review the ordinance.

PUBLIC NOTICE

Notice of the public hearing and the substance of the proposed text amendment was mailed to all the civic associations and other interested parties.

RECOMMENDATION

The current draft text amendment will address the immediate concern of the applicant in a way that does not substantially alter the intent of the home occupation provisions. Staff therefore recommends that the proposed text amendment be approved as shown in the attached language.

/dem

- Attachments: 1. Draft text amendment, June 8, 2004
2. Text Amendment Application

Page 4
July 7, 2004

3. Applicant's Statement and Supporting Materials
4. Correspondence Received